HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, April 22, 2013
83rd Legislature, Number 56
The House convenes at 1 p.m.

Fifteen bills are on the daily calendar for second-reading consideration today. They are analyzed in today's Daily Floor Report and are listed on the following page.

Three postponed bills — HB 1902 by Eiland and Sheets, HB 1905 by Eiland and Sheets, and HB 519 by Zerwas, et al. — are on the supplemental calendar for second-reading consideration today. The analyses of these bills are available on the HRO website at http://www.hro.house.state.tx.us/BillAnalysis.aspx.

The International Trade and Intergovernmental Affairs Committee had a public hearing scheduled for 9 a.m. in Room E1.014. The Investments and Financial Services Committee had a public hearing scheduled for 12:30 p.m. in Room E2.030.

The following House committees had public hearings scheduled for 2 p.m. or on adjournment: Elections in Room E2.028; Government Efficiency and Reform in Room E1.026; Judiciary and Civil Jurisprudence in Room E2.012; Land and Resource Management in Room E2.016; Pensions in Room E2.026; Technology in Room E2.010; and Ways and Means in Room E2.014.

Bill Callegari
Chairman
83(R) – 56

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Monday, April 22, 2013
83rd Legislature, Number 56

SUBJECT: Continuing and adjusting Self-Directed Semi-Independent agencies

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 5 ayes — Smith, Kuempel, Geren, Guillen, Price

0 nays

4 absent — Gooden, Gutierrez, Miles, S. Thompson

WITNESSES: For — Wilfred Navarro, Texas Association of Certified Public Accountants; Marcia Van Norman, Texas Association of CPAs; (*Registered, but did not testify:* Bob Owen, Texas Society of CPAs; Steve Stagner, American Council of Engineering Companies of Texas; Emily Williams, Freedom of Information Foundation of Texas)

Against — None

On — (*Registered, but did not testify:* Scott Gibson, Texas Board of Architectural Examiners; Cathy Hendricks, Texas Board of Architectural Examiners; Lance Kinney, Texas Board of Professional Engineers; Sonia Odell, Texas Board of Architectural Examiners; Steven Ogle and Joe Walraven, Sunset Advisory Commission; William Treacy, Texas State Board of Public Accountancy)

BACKGROUND: The Texas Legislature created the Self-Directed Semi-Independent (SDSI) Agency Project Act to allow more fiscal autonomy for the Texas State Board of Public Accountancy, the Texas Board of Professional Engineers, and the Texas Board of Architectural Examiners. In fiscal 2002, these boards began operating outside of the appropriations process, prohibiting them from using general revenue to pay for operations and requiring them to collect fees and establish their own budgets.

These agencies are authorized to:

- set and collect their own administrative fees for deposit in the Texas Safekeeping Trust Co.;
- adopt a budget based on projections of revenue;
- set administrative penalties, capped at 20 percent of their previous

annual expenditures, not to exceed $1 million; and

- enter into contracts and lease property.

These agencies must still comply with many other general laws governing state agencies, report biennially to the governor and the Legislature about their licensing and enforcement efforts, and annually report financial data to the governor, the House Appropriations Committee, the Senate Finance Committee, and the Legislative Budget Board. Each agency is governed by a governor-appointed board of directors. Collectively, the agencies employed 91 employees and spent $9.9 million on operations in fiscal 2011.

Each fiscal year the agencies are required to remit a specific amount to the general revenue fund: the Texas State Board of Accountancy, $703,344; the Texas Board of Professional Engineers, $373,900; and the Texas Board of Architectural Engineers, $510,000.

The duties of the public accountancy, professional engineers, and architectural examiners boards include licensing professionals within the jurisdiction of their acts, investigating and resolving complaints of illegal or incompetent practice of professionals, enforcing mandates and prohibitions of their acts, and taking disciplinary action.

Several other agencies, including the Real Estate Commission and some divisions of the Texas Department of Insurance, have SDSI status but do not fall under this act.

Occupations Code, sec. 1001.507 allows the Texas Board of Professional Engineers to receive in appropriations a portion of the amount of administrative penalties needed to cover the costs of investigating and prosecuting a violation.

The SDSI Act would expire September 1, 2013, unless continued by the Legislature.

DIGEST:

CSHB 1685 would discontinue Sunset review of the Self-Directed Semi-Independent Agency Project Act and establish review of the SDSI status of the public accountancy, professional engineers, and architectural examiners boards as part of these agencies' periodic Sunset reviews. Each agency would be required to pay for its own Sunset review process. The bill would move the SDSI Act from Vernon's Civil Statutes to the

Government Code and remove all references to "pilot project."

Under the bill, agencies could not hold funds in accounts outside the comptroller's control starting October 1, 2013. The accounts would have to use the comptroller's uniform statewide accounting system (USAS) to make payments, other than those from the agency's account to the Texas Treasury Safekeeping Trust Co.

The agencies would remit all collected administrative penalties to the general revenue fund, rather than retaining some of those funds. The bill would repeal Occupations Code, sec. 1001.507, which currently allows the Board of Professional Engineers to keep some administrative penalties to cover costs of investigating and prosecuting violations. Restrictions on retaining administrative penalties would apply only to penalties collected on or after the effective date of the bill.

The bill would make SDSI agencies subject to laws that apply to state agencies on purchasing requirements, interagency transfer vouchers, prompt payment compliance, and travel expense reimbursement rates.

CSHB 1685 would impose on the agencies additional requirements for reports to the Legislature and governor. Each agency would be required to report its two-year operating plan and projected budget data for two fiscal years, as well as trend performance data for the preceding five fiscal years on:

- the number of full-time-equivalent employees, personnel salaries, and total per diem and travel expenses paid to employees and each member of its governing body;
- its operating budget, including revenues and a breakdown of expenditures by program and administrative expenses;
- the number of complaints received, dismissed, and resolved by enforcement;
- the number of enforcement actions by type, how many cases were closed through voluntary compliance, and the average time to resolve a complaint;
- the number of cases alleging a threat to public health, safety, and welfare or professional standards of care;
- the amount of administrative penalties assessed and the rate of collection;
- the number of licensees by type of license and license status,

license fees, and the average time to issue a license;
- litigation costs; and
- reserve fund balances.

The bill would remove a requirement to remit to the state a $10 annual scholarship fee provided in an agency's enabling legislation and collected from license holders.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1685 would finally and appropriately move the Board of Public Accountancy, the Board of Professional Engineers, and the Board of Architectural Examiners from the pilot project phase and clarify their permanent SDSI status. Sunset staff would review the SDSI status of these agencies at the same time it reviews the operations of the agencies, enabling a more holistic evaluation process.

The SDSI pilot project has worked as intended, giving regulatory agencies flexibility and allowing them to operate outside the appropriations process. Moving the governing law for the SDSI Act from Vernon's Civil Statutes to the Government Code would further solidify their status as SDSI agencies.

CSHB 1685 would improve these agencies' accountability and enable the state to exercise greater oversight over their activities. This would be accomplished through additional reporting requirements on agency operations. The bill also would set out best practices and create a uniform approach to SDSI agencies for purchasing and payment procedures that mirrored the rules in place for other state agencies.

Requiring agencies to remit administrative penalties to general revenue would avoid the appearance of impropriety of agencies leveraging penalties to support the costs of their operations. The bill also would close a loophole that allows SDSI agencies to keep outside accounts by requiring them to use accounts within the Office of the Comptroller of Public Accounts and make payments through the USAS. This would strengthen the state's oversight of the agencies' activities and improve transparency.

OPPONENTS SAY:

CSHB 1685 would perpetuate the potential for inadequate oversight of the public accountancy, professional engineers, and architectural examiners

boards resulting from their operating as part of the SDSI pilot project. SDSI status should be discontinued and the governance of these agencies reverted back to the state.

Taking these agencies out of the appropriations process that covers most other agencies has undermined an important tool the Legislature has to hold them accountable. Even with the increased reporting requirements proposed in CSHB 1685, adequate state oversight would be difficult. The SDSI Act does not follow principles of good governance, leaving too much room for the agencies to act outside the state's control.

Moreover, the state's approach to SDSI agencies is disjointed. While the public accountancy, professional engineers, and architectural examiners boards fall under the SDSI Act and would be subject to the new reporting requirements and rules in CSHB 1685, other SDSI agencies are not included in the act, including the Real Estate Commission and some divisions within the Texas Department of Insurance. Separate statutes for different SDSI agencies create incoherence and inconsistency in the state's approach to this type of regulatory agency model.

OTHER OPPONENTS SAY:

The agencies should not be required to remit their administrative penalties to the state's general revenue fund. These amounts are relatively small and volatile and go to useful agency purposes. For example, the Board of Public Accountancy dedicates the money it collects in administrative penalties to the fifth-year scholarship funds for disadvantaged accounting students. Remitting the administrative penalty may not eliminate the appearance of impropriety, as regulated groups may not make a distinction about whether penalties go to the SDSI agency's accounts or to the state's general revenue fund.

NOTES:

The committee substitute differs from the original bill by:

- requiring the SDSI agencies to pay the cost incurred by the Sunset review to the Sunset Advisory Commission;
- deleting the requirement for SDSI agencies, if enabled by legislation, to remit to the state the $10 annual scholarship fee charged license holders;
- adding an exception to the requirement that the SDSI agencies use USAS for payments; and
- allowing SDSI agencies to accept gifts, grants, and donations;

The companion bill, SB 208 by Whitmire, which is identical to the HB 1685 as filed, was referred to the Business and Commerce Committee on April 5.

The Legislative Budget Board estimated CSHB 1685 would result in a net gain of $461,270 to general revenue-related funds through the end of fiscal 2014-15 from the administrative penalty revenue.

SUBJECT: Continuing the Texas Board of Architectural Examiners

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 5 ayes — Smith, Kuempel, Geren, Guillen, Price

0 nays

4 absent — Gooden, Gutierrez, Miles, S. Thompson

WITNESSES: For — Kelley Barnett, Texas Interior Designers for Deregulation; Matt Miller, Institute for Justice; Shea Pumarejo; Donna Vining, Texas Association for Interior Design; (*Registered, but did not testify:* Tim Bargainer, and Dean McWilliams, American Society of Landscape Architects - Texas; Brent Luck, American Society of Landscape Architects; David Lancaster, Texas Society of Architects; Pat McLaughlin; Julie Reynolds; Marilyn Roberts)

On — (*Registered, but did not testify:* Scott Gibson, Cathy Hendricks, and Sonya Odell, Texas Board of Architectural Examiners; Carrie Holley-Hurt and Joe Walraven, Sunset Advisory Commission)

BACKGROUND: The Texas Board of Architectural Examiners licenses architects, landscape architects, and registered interior designers. The board receives and investigates complaints, takes enforcement action, and provides information to the public, licensees, and building officials.

The nine-member, governor-appointed board includes four architects, one landscape architect, one registered interior designer, and three public members, at least one of whom must have a physical disability. The board had 22 employees in fiscal 2011. That same year, it regulated 12,482 architects, 1,485 landscape architects, and 5,217 registered interior Designers.

As a self-directed semi-independent agency, the board funds itself through licensing fees and administrative penalties instead of receiving legislative appropriations. In fiscal 2011, the board collected $2.8 million in licensing and administrative fees and spent $2 million on agency operations. The

board also sent $3.3 million in professional fees to the general revenue fund.

The board last underwent Sunset review in 2002-03. Unless continued, the board's authority will expire September 1, 2013.

Occupations Code, sec. 1053.154 requires an applicant seeking certification as a registered interior designer to pass an examination set by the board, which may be the National Council for Interior Design Qualification (NCIDQ) exam or equivalent. Under sec. 1053.158, a registered interior designer who has practiced for six years, began practicing before September 1, 1991, and applied for registration before September 1, 1994, may receive certification without passing the examination.

Occupations Code, sec. 1051.651(b) governs fees set by the board for renewal of architect's licenses. The amount of the fee must equal the sum of the costs of the examination fee scholarship program and the costs of administering the renewal for in-state applicants.

DIGEST:

HB 1717 would continue the Texas Board of Architectural Examiners until September 1, 2025.

By repealing Occupations Code, sec. 1053.158 and amending sec. 1051.351, the bill would require all registered interior designers who had not passed the NCIDQ or a similar examination to meet the examination requirements by September 1, 2016, to renew their registered interior designer certificates.

HB 1717 would change or increase many of the administrative fines and fees charged by the board. For architects, landscape architects, and registered interior designers seeking renewal of expired certificates, the bill would direct the board to peg the late fees for renewal to a multiple of the regular renewal fees charged to architects, which are determined under Occupations Code, sec. 1051.651(b). The bill also would increase by $200 the fee for initial and renewed certificates issued to architects.

In imposing an administrative penalty to punish a violation by an architect, landscape architect, or registered interior designer, the board would consider each day a violation occurred or continued as a separate violation beginning September 1, 2013.

Beginning January 1, 2014, HB 1717 would require criminal background checks for all applicants for initial or renewed certification as an architect, landscape architect, or registered interior designer. Applicants for initial certification would be required to submit a complete and legible set of fingerprints to the board or the Department of Public Safety (DPS) for the purpose of conducting state and national criminal history checks. If DPS conducted the background check, it could collect from applicants the costs incurred. Applicants for renewed certification would not have to submit fingerprints if they had done so during a previous application for initial or renewed certification.

The bill would take effect September 1, 2013, and the board would adopt rules to implement HB 1717 by December 1, 2013.

SUPPORTERS SAY:

HB 1717 appropriately would continue the Texas Board of Architectural Examiners in its current form, with authority over licensing architects, landscape architects, and interior designers. As an SDSI agency, the board not only covers its own operating expenses while contributing to general revenue, it also has independence and flexibility in how it conforms to new challenges in the regulatory landscape. The Sunset Advisory Commission concluded that reorganizing the board by combining it with the Texas Department of Licensing and Regulation (TDLR) or with the Texas Board of Professional Engineers (TBPE) would not generate significant efficiencies.

The board should continue to regulate interior design, as recommended by the Sunset Commission. Registered interior designers make decisions about plans that impact public safety and welfare. They help ensure that plans meet local building codes as well as federal and state safety, accessibility, and energy efficiency requirements. These functions are particularly important in plans to build the interiors of nursing homes, schools, hospitals, and other sites with statutory building requirements.

The private industry qualification favored by some who oppose HB 1717 is not a substitute for official licensing, which ensures that licensees undergo continuing education and a background check. Many contracts for bid, especially from public universities and hospitals, include language requiring that those submitting plans be “registered design industry professionals.” Only state-registered interior designers meet this requirement.

Removing the authority of the board to offer a registered interior design license, as advocated by some critics of HB 1717, would have an adverse effect on the 14 Texas colleges and universities offering interior design programs, and would be unfair to the students in two- and four-year programs who have invested time and money to achieve these qualifications. Several industry associations have expressed a desire for continued regulation under the board.

HB 1717 would ensure that the "registered interior designer" designation remained meaningful by eliminating the grandfather clause allowing certain interior designers to use the title without taking a qualifying exam. An estimated 60 percent of registered interior designers have never taken the NCIDQ or its equivalent. This unfairly allows registered interior designers with ostensibly the same qualifications to practice under two different standards, which is unfair to consumers who expect a certain level of quality and to registered interior designers who have completed all the certification requirements.

Other provisions in HB 1717 would make the statute for the Texas Board of Architectural Examiners more consistent and uniformly applied. Pegging the late fees for renewal to a multiple of an architect's regular renewal fee would be fairer, as would increasing by $200 the initial and renewed certification for architects. This would match practices for landscape architects and registered interior designers. In addition, considering a violation a new violation each day it continued would match enforcement practices at other agencies.

By allowing the board to conduct fingerprint background checks on applicants, HB 1717 would enable a more comprehensive version of the background checks already in place for licensees. Fingerprints give DPS a higher degree of certainty when screening the criminal backgrounds of applicants, enabling the agency to also check for out-of-state offenses.

OPPONENTS SAY:

The bill's provisions on licensing interior design and requiring licensees to submit fingerprints for criminal background checks should be reconsidered.

Only 26 states license interior design, and Texas should follow suit in this bill by removing the authority of the board to license registered interior designers. Even if one considers the regulation of interior design as vital to

the public health and welfare, the board's regulation of the industry cannot reach very far because unregistered interior designers may legally practice and only a subset of all designers seek state registration. The board processes very few complaints about registered interior designers, who were the subject of only five complaints and two enforcement actions in fiscal 2011. Unlike architects or landscape architects, no type of work is statutorily mandated to be completed by interior designers, nor is their seal required on plans before construction. Private industry groups offer alternative means of demonstrating competence, namely by taking and passing the NCIDQ exam.

If licensing is to continue, the grandfather provision for long-practicing, registered interior designers who applied for the license prior to 1994 should not be eliminated. The years of experience they have in the industry should be an adequate demonstration of the quality and standard of work they produce. The NCIDQ is a three-part test costing $965 that roughly one-third of testers fail. Experienced interior designers should not be required to spend time and money taking the test and placing at risk their designation as a registered interior designer. Those who chose not to pursue the qualification would experience financial repercussions, as many bids include a requirement for work to be completed by "registered design industry professionals." In addition, by reducing the pool of registered interior designers, the bill would limit the opportunities for aspiring registered interior designers because candidates must serve a probationary period working under a registered interior designer before they can take the NCIDQ.

At the very least, HB 1717 should extend the amount of time available to grandfathered, registered interior designers to satisfy the new requirement to take the exam. The NCIDQ has three sections, and must be taken in at least two sittings, offered twice a year. The bill's deadline of September 1, 2016 would not provide enough time for grandfathered, registered interior designers who did not pass at the first attempt to retake the exam.

Also, HB 1717 should not require architects and interior designers to submit fingerprints for a criminal background check before receiving their licenses. An FBI background check would be intrusive and out of proportion to the type of work performed by these professionals.

OTHER OPPONENTS

The Texas Board of Architectural Examiners' SDSI status should be removed, and the board should be consolidated into another regulatory

SAY:

agency, such as the Texas Board of Professional Engineers (TBPE) or the Texas Department of Licensing and Regulation (TDLR). TDLR has a good track record of administering its licensing programs, including lowering the fees for its licensees. Having taken the board out of the appropriations process, the Legislature can no longer exercise effective oversight over it.

Combining multiple occupational licensing programs into a single agency prevents regulatory capture by the regulated industries. TDLR already has experience with many of the regulatory issues covered by the board, including regulating Americans With Disabilities Act compliance with its Architectural Barriers and Industrialized Housing and Buildings programs, and could easily absorb the functions of the Board of Architectural Examiners.

NOTES:

The companion bill, SB 205 by Nichols, has been referred to the Senate Business and Commerce Committee.

According to the fiscal note, HB 1717 would result in a gain to the state of $112,000 in fiscal 2014-15 due to the $200 increase in professional fees for architects. Three-quarters of this money would be deposited in general revenue, with the remainder going to the Foundation School Fund.

SUBJECT: Prohibiting use of a wireless device while driving on school property

COMMITTEE: Transportation — favorable, without amendment

VOTE: 10 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, Pickett, Riddle

0 nays

1 absent — McClendon

WITNESSES: For — Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Joshua Newman and Scott Niven, Red Oak Independent School District; (*Registered, but did not testify*: Chase Bearden, Coalition of Texans with Disabilities; Frank Galitski, Farmers Insurance; Bo Gilbert, United Services Automobile Association; Brock Gregg, Association of Texas Professional Educators; Jonna Kay Hamilton, Nationwide Insurance; Shanna Igo, Texas Municipal League; Bryan Sperry, Children's Hospital Association of Texas; Theodore Spinks, Texas Medical Association; Randy Teakell, AT&T)

Against — (*Registered, but did not testify*: Terri Hall, Texans Uniting for Reform and Freedom)

On — (*Registered, but did not testify*: John Barton, Texas Department of Transportation)

BACKGROUND: Transportation Code, sec. 545.425(a)(2) defines a "wireless communication device" as a device that uses a commercial mobile service, as defined by 47 U.S.C. Section 332. This term includes cell phones.

Subsection 545.425(b) prohibits drivers from using a wireless communication device in a school crossing zone unless their vehicle is stopped or they are using a hands-free device.

DIGEST: HB 347 would prohibit a driver from using a wireless communication device while on public or private elementary or middle school property unless the vehicle was stopped or the driver used a hands-free device.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 347 would create consistency and promote safety by implementing a statewide prohibition on the use of cell phones by drivers on school property.

Lanes and parking lots that are on school property where drivers drop off and pick up students currently are not included in the state's ban on cell phone use by drivers who are in school crossing zones. HB 347 would add school property to the ban and improve pedestrian safety at elementary and middle school campuses.

Motorists already are accustomed to the prohibitions on cell phone use in school crossing zones, so extending the prohibition to school property makes sense because pedestrian safety is especially important at pick-up and drop-off zones. Distracted driving places young students at risk at their schools and is a growing problem the bill would help address. More than nine people are killed and more than 1,600 people are injured each day in the United States as a result of distracted driving, which includes using a cell phone, according to the Centers for Disease Control and Prevention.

The bill would provide reasonable provision for motorists on school property to use cell phones to communicate in a safe manner if the vehicle were stopped or the driver used a hands-free device. This is key for a driver trying to reach a student that the driver is trying to collect. Provisions in current law that create an affirmative defense to prosecution for drivers who use a cell phone to make an emergency call in a school zone also would apply to a person who made such a call while driving on school property.

OPPONENTS SAY:

While its intent is admirable, HB 347 would address just one of the innumerable distractions that can cause dangerous driving. Other distractions – including listening to the radio, talking to passengers, and using vehicle navigation systems – contribute to decreased awareness and reduced judgment time. Efforts to prevent dangerous driving in the vicinity of schools should take this into account in addressing the core issue of distracted driving.

SUBJECT: Transfer of extraterritorial jurisdiction between certain municipalities

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 8 ayes — Deshotel, Walle, Frank, Goldman, Herrero, Paddie, Simpson, Springer

0 nays

1 absent — Parker

WITNESSES: For — Alfred Damiani and Fernando Rocha, San Antonio Ranch Homeowners Association; Tom Schoolcraft, City of Helotes; (*Registered, but did not testify:* Angela Briles)

Against — John Dugan, City of San Antonio; (*Registered, but did not testify:* TJ Patterson, City of Fort Worth)

BACKGROUND: Local Government Code, ch. 42, establishes an extraterritorial jurisdiction (ETJ) around municipalities to promote the health, safety, and welfare of residents. The chapter also sets standards for determining the extent of ETJ for municipalities of various populations. In general, a municipality is prohibited from incorporating or annexing land in the existing ETJ of another municipality without its express consent.

If the existing municipality refuses to give consent, a majority of the voters in the subject area and owners of at least half of the land can petition the governing body to annex. If the governing body fails to do so, this failure constitutes its consent to the incorporation of the proposed municipality.

Local Government Code 43.024 establishes a process for inhabitants of an area to petition a general–law municipality for annexation. A general-law municipality may annex an area if a majority of qualified voters in the area vote in favor of annexation and accordingly file an affidavit to that effect.

DIGEST: HB 397 would allow certain municipalities to adopt a resolution accepting a transfer of another municipality's ETJ provided the area was contiguous with the accepting municipality's corporate limits or ETJ and the releasing

municipality had not identified the area to be annexed as of September 30, 2012.

An "accepting municipality" — one that could adopt a resolution under the bill — would have to be a general-law municipality with a population less than 7,500 that did not own an electric, gas, or water utility, and that was located in the same county with at least 75 percent of incorporated land of a transferring municipality. A "releasing municipality" would have to be one with a population of more than 1.3 million that had annexed territory for a limited purpose.

An accepting municipality could annex without consent any territory located in its ETJ before January 1, 2013, and any territory transferred to its ETJ under the provisions of HB 397. The transfer would be effective 10 days after the resolution adopted under the bill was published in general circulation newspapers of both affected municipalities.

The area to be transferred would have to be identified on a map and through standard surveying techniques and could not exceed the size of the corporate limits of the municipality receiving the land. The bill would supersede any conflicting provisions in state or local law. A resolution adopted under the bill could be challenged only by a *quo warranto* proceeding initiated by the attorney general.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 397 would allow Helotes, Texas to annex land that is currently in San Antonio's ETJ. The author plans to offer a floor amendment to clarify that the bill would apply to an accepting municipality that was a Type A general-law municipality with a population between 5,500 and 7,500 that did not own an electric, gas, or water utility (Helotes). A releasing municipality would be defined as a home-rule municipality with a population of more than 1.3 million and less than 1.5 million (San Antonio).

Residents who live in the subject tract, most of which is part of the San Antonio Ranch Homeowners Association, have for many years been working toward annexation by the City of Helotes. Residents in San Antonio Ranch consider themselves to be members of Helotes, as they

have Helotes mailing addresses and are geographically connected with that city. Current law, however, bars Helotes from taking measures to bring the land into its ETJ where it would be annexable.

San Antonio Ranch residents have already pursued to no avail options available to them under state law to initiate the annexation process. In 2009, San Antonio Ranch delivered a letter and petition to Helotes, which in turn adopted a resolution requesting that the City of San Antonio release the subject tract so that it could be annexed. The City of San Antonio, however, did not take any further steps to evaluate the request for annexation. As such, the process has stalled, and the residents of San Antonio Ranch have been kept in a state of limbo with limited services and no practicable path toward annexation.

HB 397 would free San Antonio Ranch residents from their current state of administrative limbo and enable them to take steps toward securing the level of services they require. Current channels available to Type A general-law municipalities will not work for the residents because their only option under existing law is to petition San Antonio for annexation. Helotes is in the best position to provide the San Antonio Ranch area with police, fire, public works, and other municipal services due to its geographic proximity and accessibility to the community via State Highway 16. For example, the nearest fire station in Helotes is about two miles away from San Antonio Ranch, while the nearest station in San Antonio is at least twice that distance.

In addition, San Antonio Ranch residents have little political standing in the City of San Antonio, a painful fact that recently was demonstrated when the San Antonio City Council shrugged off an organized effort among Ranch residents to oppose a planned development in their midst.

Arguments that San Antonio should retain the ETJ in question due to its placement in the Edwards Aquifer Recharge zone are exaggerated. The Edwards Aquifer is no less important to Helotes than it is to San Antonio. As such, Helotes has an equally strong incentive to uphold strict standards in the aquifer's environmentally sensitive recharge zone.

OPPONENTS SAY:

It appears that HB 397 would apply to cities other than Helotes. The language in the bill would apply its provisions to a Type A general-law municipality in Bexar County with a population less than 7,500 that did not own an electric, gas, or water utility. A range of municipalities wider

than the bill's stated intent could be covered under this description.

HB 397 would circumvent existing state laws governing limited purpose jurisdiction and annexation and allow one municipality to take land from the ETJ of another without its consent. State laws governing municipal growth and annexation were carefully designed to establish clear processes, and where disputes arise, municipalities should be able to work out the differences without state intervention.

Current state law specifies a process by which property owners and residents can petition to initiate an annexation of land in another city's ETJ. Creating a specific process to resolve a dispute involving San Antonio Ranch, Helotes, and San Antonio is unnecessary and sets a dangerous precedent of legislative intervention in local affairs.

The City of San Antonio has a strong interest in retaining municipal authority over the land in and around the San Antonio Ranch HOA, as the area is in the Edwards Aquifer Recharge Zone. The recharge zone is an especially environmentally sensitive area where water infiltrates into the aquifer, the primary source of water for the entire San Antonio region and beyond. The City of San Antonio has ordinances designed to grant special protections to this area to ensure a steady, clean supply of water. If San Antonio were forced to transfer this land to Helotes, San Antonio would lose its ability to enact and maintain laws that protect this vital resource.

OTHER OPPONENTS SAY:

HB 397 would not include any condition to require popular support among the residents and property owners subject to transfer from San Antonio's ETJ to Helotes' ETJ. A bill enacted by the Legislature in 2011, HB 2902 by Zerwas, made a similar transfer in Fort Bend County subject to 80 percent of the real property owners in the area requesting the release. Without a requirement of a minimum threshold of support among residents, the bill unintentionally could force the transfer against the wishes of a majority of area residents.

NOTES:

The identical companion, SB 1761 by Uresti, was referred to the Senate Intergovernmental Relations Committee.

Bills similar to HB 397 have been considered by previous legislatures, including SB 1104 by Madla in 2005 and HB 535 by Leibowitz in 2007. Both bills died in the House Calendars Committee.

SUBJECT: Record confidentiality for juveniles involved in fine-only misdemeanors

COMMITTEE: Corrections — favorable, without amendment

VOTE: **(*On original bill:*)**
5 ayes — Parker, White, Allen, J.D. Sheffield, Toth

0 nays

2 absent — Riddle, Rose

WITNESSES: **(*On original bill:*)**
For — Benet Magnuson, Texas Criminal Justice Coalition; Jeanette Moll, Texas Public Policy Foundation; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Leah Gonzalez, The National Association of Social Workers Texas Chapter; Lauren Rose, Texans Care For Children; Matt Simpson, ACLU of Texas; Michael Vitris, Texas Appleseed; Jennifer Erschabek; Susan Fenner; LaVelle Franklin)

Against — None

On — David Fraga and Randy Zamora, City of Houston; (*Registered, but did not testify:* Jennifer Cafferty, Texas Judicial Council; Skylor Hearn, Texas Department of Public Safety)

BACKGROUND: Under Code of Criminal Procedure (CCP), art. 45.0217(a), justice and municipal court records, files, and information relating to children who are convicted of and have satisfied the judgment for fine-only misdemeanor offenses, other than traffic offenses, are confidential. Such records, including those held by law enforcement, may not be disclosed to the public. CCP, art. 45.0217(b) makes this otherwise confidential information available only to judges and court staff, criminal justice agencies, the Department of Public Safety, attorneys involved in the case, the child, and the child's parent or guardian.

Under CCP, art. 44.2811, which governs appeals, these records also are confidential, as well as records in cases in which a child is convicted and then the case is affirmed. Family Code, sec. 58.00711 makes confidential these same records in the state juvenile justice information system.

DIGEST:

(*This analysis reflects the author's intended floor substitute.*)
The proposed floor substitute for HB 528 would make confidential all records, files, and information in justice and municipal courts relating to a child who was charged with, found not guilty of, had a charge dismissed for, or was granted deferred disposition for a fine-only misdemeanor, other than a traffic offense. The bill would eliminate the current requirement that before confidentiality is granted in a case in which a child has been convicted, the judgment must be satisfied.

HB 528 would apply the same confidentiality requirements to juvenile justice information system records of these cases and to records of these cases for fine-only misdemeanors committed by children and appealed.

HB 528 would take effect January 1, 2014, and would apply offenses committed before, on, or after that date.

SUPPORTERS SAY:

HB 528, as proposed in the floor substitute, is necessary to close a loophole in current law that makes the criminal court records of some, but not all, juveniles involved in fine-only misdemeanors confidential. Allowing some juvenile records to be public while others remain confidential is unfair, can put juveniles at risk, and works against the rehabilitation goals of the juvenile justice system.

In 2011, the 82nd Legislature revised the law dealing with access to the criminal records of juveniles to give them greater protection and more confidentiality. The revisions included making confidential the records of juveniles who were convicted by justice and municipal courts of fine-only misdemeanors, such as truancy and disorderly conduct, and who completed the terms of their sentence. However, due to an oversight, the revisions did not make confidential the records of juveniles who were charged only, not convicted, found not guilty, had charges dismissed, or were granted deferred disposition.

Some jurisdictions have interpreted current law to mean that personal information about these juveniles who are charged but never convicted must be accessible to the public. For example, in Harris County, personal identifying information in these cases is publicly available. However, other jurisdictions have opted to keep this information confidential. HB 528 would clear up this confusion and ensure that the state operate under a clear, uniform policy concerning these juvenile records.

HB 528 would close the loophole in current law by extending to all youths with cases involving fine-only misdemeanors the same confidentiality protections given to juvenile offenders involved in juvenile court and those who were convicted of fine-only misdemeanors and satisfied their judgments. This would treat juveniles equitably, ensuring that all were protected and had the opportunity to move forward without a public record after involvement with the courts. Keeping these records confidential, even though they are in a criminal court, would be consistent with the state's broad policy on juvenile records.

It would be unfair and burdensome to steer some juveniles to the state's expunction law to keep their information confidential. Confidentiality for juveniles is designed to give them blanket protections while they are involved with the court. Expunction is a time-consuming and expensive process that usually involves an attorney. Other juveniles do not have to seek expunction to keep their records out of the public arena, and such action should not be required of juveniles who are charged but never convicted of fine-only misdemeanors.

The overriding concern should be the proper handling of personal information of juveniles, not the collection of fines or possible incentives for juveniles to satisfy court requirements. Juvenile courts and probation departments are able to gain compliance with their requirements while juvenile records are confidential, and justice and municipal courts should be able to do the same.

HB 528 would not change current provisions that allow for appropriate access to juvenile records by courts and law enforcement officials.

OPPONENTS SAY:

While well intended, HB 528, as proposed in the floor substitute, inappropriately would make confidential records of criminal cases, which generally are kept public. While juvenile case records are routinely confidential, those cases are in the civil, not criminal, system. It might be best to continue to maintain the access to criminal court records that current law provides.

Current law allowing records to be expunged could be used by youths involved in criminal courts and who were found not guilty, had their cases dismissed, or were granted deferred adjudication. If the expunction process is too onerous or has other problems, changes should be made to

those laws.

Removing the stipulation that judgments be satisfied before confidentiality is granted in cases with convictions could reduce incentives for youths to meet the terms of their sentences. Current law can work to hold out confidentiality as a carrot to juveniles to complete their sentences, which can include community service and fines. Without this incentive, some youths may be less inclined to meet court requirements. In addition, making records confidential after a conviction but before judgments were satisfied could make the collection of these fines difficult for cities and counties that use third-party collection agents.

NOTES:

The proposed floor substitute differs from the original bill, which was reported without amendment by the committee, as follows. The floor substitute would:

- keep confidential the records of children who were charged, found not guilty, had charges dismissed, or were granted deferred adjudication; and
- apply provisions dealing with confidentiality during appeals to those who were juveniles when a fine-only offense was committed, not just those who were juveniles when they were convicted.

The original bill would have extended current confidentiality provisions only to the records of children charged with offenses. It also would have taken immediate effect or been effective September 1, 2013, while the floor substitute would take effect January 1, 2014.

A duplicate bill, HB 497 by Hernandez Luna, is pending in the Corrections Committee.

SUBJECT: Exempting private schools from paying agricultural rollback taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 5 ayes — Hilderbran, Bohac, Button, N. Gonzalez, Strama

0 nays

4 absent — Otto, Eiland, Martinez Fischer, Ritter

WITNESSES: For — Tom Daniel, St. Andrew's Episcopal School (*Registered, but did not testify:* Jennifer Allmon, Texas Catholic Conference and the Roman Catholic Bishops of Texas; Raif Calvert, Independent Colleges & Universities of Texas; David Dunn, Texas Charter Schools Association; Randy Erben, St. Andrew's Episcopal School; Daniel Gonzalez, Texas Association of Realtors; Jeffrey Howard and Mignon McGarry, Real Estate Council of Austin; Karen R. Johnson, United Ways of Texas; Steve Martens, Lutheran School Association of the Greater Austin Area; Rees; Caroline Simon; Katie Van Dyk)

Against — None

On — Deborah Cartwright, Comptroller of Public Accounts

BACKGROUND: Tax Code, ch. 23. subch. D provides for a special reduced appraisal valuation method used to determine tax payments for land used for certain activities related to agriculture or wildlife management. If the use of the land changes and no longer qualifies for the special reduced appraisal changes, an additional "rollback tax" is imposed equal to five years of the tax savings achieved through the special classification plus a 7 percent annual interest.

The additional tax does not apply if the land is transferred to or from a subdivision of the state, such as a public school, or if the owner is a qualified religious or charitable organization that used the land for an eligible purpose within five years to avoid having to pay the additional tax.

DIGEST: HB 561 would exempt nonprofit private schools that qualified for a

property tax exemption from having to pay an additional rollback tax for changing the use of agricultural or wildlife management land. The school would have to use the land for a tax-exempt purpose under current law within five years. The bill only would apply to a change of land use after its effective date.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 561 is a simple measure with a minimal fiscal impact that would end the unfair and counter-productive practice of requiring property tax-exempt private schools to pay an additional tax for land converted from agricultural and similar uses to educational facilities. The bill would simply put private schools on equal footing with other entities, such as public and charter schools, and charitable and religious organizations that qualify for an exemption from property taxes on land converted for educational purposes.

Over the years, the Legislature has broadened the types of organizations that are exempted from paying the rollback tax. In 1995, SB 428 granted exceptions to religious organizations, and in 2003 HB 2516 added charitable organizations. Unfortunately, the property of tax-exempt nonprofit private schools is not among the entities exempted from paying the tax on land converted for educational use. Private schools that pay the tax penalty must pass the cost on to students and parents, affecting the affordability of education. HB 561 would correct this and ensure that private schools with an exemption from paying property taxes did not have to pay the additional tax if they purchased agricultural land for an educational purpose.

The bill would remove barriers for nonprofit private schools that wish to expand to lower-cost land outside of urban areas. St. Andrew's Episcopal School in Austin, for example, has purchased land adjacent to their existing upper campus that is classified as agricultural land for appraisal purposes. The school wants to expand to the additional land, but doing so would trigger the hefty tax penalty for a change from agricultural use.

The bill would have a minimal fiscal impact on the state and a significant impact on the schools that would otherwise have to pay the tax penalty. A fiscal note for previous legislation in 2003 (HB 2516) exempting

charitable organizations from the additional tax found no impact to the state. Any fiscal impact to the state would be from opportunity costs – the state would lose the opportunity to receive the additional tax – and not from reducing existing revenue streams.

OPPONENTS SAY:

HB 561 would reduce taxes collected for public schools and local governments by an uncertain amount. The bill would have an impact on state funds by reducing revenue that otherwise would flow into the Foundation School Fund, thereby requiring the state to make up the difference with general revenue. The bill would exempt from the additional tax a wide variety of schools, including private primary and secondary schools and private universities and colleges. The comptroller does not have data on the number of schools that would be affected by this provision or the revenue collected from schools that have previously paid the penalties, making it impossible to quantify the potential fiscal impact.

Even if the amount is not overwhelming, the bill effectively would transfer funds destined for public schools to private schools in the form of tax exemptions. The tax burden created by diverting this revenue would then be shifted to other groups, raising issues of equity and fairness. The state cannot afford to take funds away from Texas public school children, especially in the context of recent court action finding that the state's school finance system is not providing adequate funding for public education.

NOTES:

The Senate companion bill, SB 269 by Seliger, is pending in the Senate Finance committee.

The Legislative Budget Board fiscal note says the bill would reduce the amount of additional taxes collected by local taxing units by exempting certain schools from the payment requirement. According to the LBB, this would reduce taxable values and thereby increase costs to the Foundation School Fund, creating an indeterminate cost to the state.

SUBJECT: Requiring photo identification badges for providers in hospitals

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

WITNESSES: For — (*Registered, but did not testify:* Dan Finch, Texas Medical Association; Martin Giesecke, Texas Society of Anesthesiologists; Lawrence Higdon, Texas Speech, Language, Hearing Association; Bradford Shields, Texas Society of Health System Pharmacists; Elizabeth Sjoberg, Texas Hospital Association; Lee Spiller, Citizens Commission on Human Rights; David Williams, Texas Nurse Practitioners)

Against — None

On — (*Registered, but did not testify:* Mari Robinson, Texas Medical Board)

DIGEST: CSHB 1782 would require hospitals to adopt a policy requiring a health care provider to wear a photo identification badge during patient encounters.

The badges would be worn visibly and clearly state the provider's:

- first or last name, at minimum;
- title and hospital department; and
- status as a resident, intern, student, or trainee, if applicable.

Badges would be required for all health care providers providing direct patient care, except when medically unallowable. Health care providers would be defined as those who provide health care services at a hospital as a physician, hospital employee or contractor, or during a training or educational program.

The bill would take effect January 1, 2014.

SUPPORTERS SAY:

CSHB 1782 would improve patient safety at very little cost to hospitals. By clearly identifying staff, photo ID badges would help prevent the unauthorized treatment of hospital patients. They also would reduce patient confusion and doubt about the source of medical advice and treatment offered, especially for hospital patients under the care of multiple providers.

The bill's badge requirements would enable patients and their caregivers to more accurately monitor the patient's condition and evaluate their treatment options by helping distinguish the information and services dispensed by providers of different titles, departments, and experience. Photo ID badges also improve communication between patients and health care providers by making providers more approachable, which allows patients to take a more active role in their health care.

Hospitals could easily adapt to CSHB 1782 because its requirements would not be new — they merely would modify existing hospital badge policies. Many have already implemented photo ID badges as a professional "best practice," and some medical professions require their members to list their credentials on their badges. The bill would standardize these practices across all hospitals to increase predictability for patients and caregivers.

OPPONENTS SAY:

CSHB 1782 would produce minor improvements in patient safety at best, while imposing an unnecessary and burdensome regulation on hospitals. There is little evidence that photo identification badges improve patient outcomes, and accounts of patient confusion that would be prevented by the bill are scarce and anecdotal.

The bill's requirements would infringe on the right of hospitals to determine their own internal policies and procedures. Photo ID badges for staff are already common in hospitals, which demonstrates that such routine decisions are best made at the facility level. The mandate in CSHB 1782 would impose a financial and administrative burden that could be disproportionately felt by smaller hospitals.

NOTES:

CSHB 1782 differs from the bill as introduced in that it would:

- apply only to hospitals;
- amend the badge requirements by requiring only the provider's first or last name, hospital department, title, and trainee status, if applicable;
- not require the type of license held by the practitioner to appear on the badge;
- remove enforcement language equating a violation of the bill with a violation of the law regulating the provider's health care profession;
- amend the Health and Safety Code instead of the Occupations Code; and
- apply to health care providers as defined in the bill, rather than practitioners as defined in the Occupations Code.

The companion bill, SB 945 by Nelson, was passed by the Senate by a vote of 31-0 on March 21.

SUBJECT: Preference in state procurement extended to goods manufactured in Texas

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Cook, Giddings, Farrar, Frullo, Harless, Huberty, Menéndez, Sylvester Turner

5 absent — Craddick, Geren, Hilderbran, Oliveira, Smithee

WITNESSES: For — Thornton Medley, United Steelworkers District 13 Council; John Patrick, Texas AFL-CIO; (*Registered, but did not testify*: Dennis Anderson, United Auto Workers; Joe Arabie, Lee Forbes, René Lara, Becky Moeller, and Ed Sills, Texas AFL CIO; Terry Briggs, Brotherhood of Locomotive Engineers; Robert Cash, Texas Fair Trade Coalition; Michael Cunningham, Texas State Building and Construction Trades Council; Connie English, Jr., United Transportation Union; Currie Hallford, TPLC CWA; Dwight Harris, Texas AFT; Derrick Osobase, Texas State Employees Union; Kamron Saunders, United Transportation Union)

Against — None

BACKGROUND: Government Code, sec. 2155.074 requires state agencies undergoing procurement to purchase the goods or services providing the best value to the state. In determining the best value, purchase price and whether the goods meet specifications are the most important factors state agencies must consider, among several other factors, such as the quality and reliability of the goods and services.

Government Code, sec. 2155.444 outlines circumstances in which state agencies purchasing goods, including agricultural products, must give preference to goods produced or grown in this state or offered by Texas bidders.

Goods produced or offered by a Texas bidder owned by a disabled military veteran and resident of the state receive first preference when the cost and quality of competing goods are equal among Texas bidders. If goods produced or grown in the state or offered by Texas bidders are not of equal cost and quality to goods produced or grown elsewhere, then

goods produced or grown in other U.S. states receive preference over foreign products of equal cost and quality.

DIGEST:

HB 535 would require state agencies to also give preference to goods manufactured in Texas. The term "manufactured," with respect to assembled goods, would be defined as "the final assembly, processing, packaging, testing, or other process that adds value, quality, or reliability."

The same criteria for giving preference to goods produced or grown in the state would apply to goods manufactured in the state. In addition, the bill would require the comptroller's office and other state agencies acting under the state's preference criteria to promote the purchase of goods manufactured, produced, or grown in the state.

The bill would take effect September 1, 2013, and would apply only to contracts for goods entered into on or after that date.

SUPPORTERS SAY:

HB 535 would ensure that Texas dollars were used to procure goods manufactured in Texas whenever possible. Since 1995, the state has shown preference to products produced or grown in the state if they were of equal value to goods produced or grown elsewhere. Similarly, the United States has promoted "Buy America" laws for more than 70 years with respect to government procurement.

In some instances, Texas manufacturing plants have closed due to foreign competition. HB 535 would benefit the state's manufacturing workforce by adding manufactured goods to those considered by state agencies. When goods manufactured in Texas were purchased by these agencies, it would boost the state's overall economy.

Those who interpret produced goods to include manufactured goods miss the distinction that "produced" refers to a singular item, whereas "manufactured" refers to multiple components being assembled to make a finished good. Even if produced goods encompass manufactured goods, it would be beneficial to include both in statute.

The bill would result in a preference for buying products made by Texas manufacturers only when possible. The preference would apply only when the Texas goods were of equal value to those from outside the state.

OPPONENTS

The changes proposed in HB 535 are unnecessary. Texas law already

SAY: requires state agencies to purchase goods produced in Texas when they are of equal value to out-of-state goods, and this has been interpreted to include manufactured goods.

SUBJECT: Transition services for students enrolled in special education programs

COMMITTEE: Public Education — favorable, without amendment

VOTE: 10 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

1 absent — Huberty

WITNESSES: For — Brenda Fox and Cindy Morris, The ARC of The Gulf Coast; Jeff Miller, Disability Rights Texas; Jennifer Morris; Cara Schwartz, Texas Council of Administrators of Special Education; Rona Statman and Deborah Vaughn, The ARC of Texas; (*Registered, but did not testify:* Portia Bosse, Texas State Teachers Association; Miryam Bujanda, Methodist Healthcare Ministries; Monty Exter, Association of Texas Professional Educators; Eileen Garcia, Texans Care for Children; Dwight Harris and Ted Melina Raab, Texas AFT; Tanya Lavelle, East Seals Central Texas)

Against — None

On — (*Registered, but did not testify:* David Anderson and Gene Lenz, Texas Education Agency; Jim Hanophy, Department of Assistive and Rehabilitative Services)

BACKGROUND: Education Code, sec. 29.011 requires the commissioner of education to adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs. The procedures must consider and address, if appropriate, issues related to the student's transition to life outside the public school system, including postsecondary education options, vocational evaluation, employment goals, independent living goals, and referrals to government services.

SB 1788 by Patrick, enacted in 2011 by the 82nd Legislature, requires that transition planning begin no later than a student's 14th birthday.

DIGEST:

HB 617 would charge the commissioner of education with requiring all school districts during the 2013-14 school year to designate at least one employee to serve as the district's designee on transition and employment services for students enrolled in special education programs. The same requirement would apply to districts that had entered into an agreement to jointly operate their special education programs. The commissioner would develop minimum training guidelines for the designees.

The designee would have to provide information and resources about effective transition planning and services and interagency coordination to ensure that local school staff communicated and collaborated with students enrolled in special education programs and their parents and, as appropriate, with local and regional staff of various state health and human services agencies.

The bill also would require the Texas Education Agency (TEA), with assistance from the Health and Human Services Commission, to develop a transition and employment guide by September 1, 2014 for students enrolled in special education and their parents with information on:

- transition services;
- employment and supported employment services;
- social security programs;
- community and long-term services;
- postsecondary educational programs and services;
- information sharing with health and human services agencies and providers;
- guardianship and alternatives to guardianship;
- self-advocacy, person-directed planning, and self-determination; and
- contact information for all relevant state agencies.

TEA could contract with a private entity to prepare the guide, which would be updated at least once every two years and posted on TEA's website in an easily accessible manner. School districts also would be required to post the guide on their websites and provide written information, and, if necessary, assistance to a parent on how to access the electronic version of the guide. This information would be provided at the first meeting of the student's admission, review, and dismissal (ARD) committee at which transition was discussed or at the first committee meeting that occurred after the guide became available.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 617 would improve transition services and increase the likelihood of students with disabilities gaining employment and post-secondary opportunities after they graduated from high school. While some districts do a good job of preparing students enrolled in special education programs for adult living, other districts fail to offer meaningful transition services or supported employment opportunities. The bill would help ensure consistent services for all students no matter where they attended school.

The bill would require school districts to designate an employee to be the district's designee on transition and employment services. This would help parents by providing a clear point of contact within the district on their child's transition plan. The transition designee likely would not be a new full-time employee because most districts already have someone performing this function as a vocational or guidance counselor, an educational diagnostician, a vocational teacher, or another suitable position.

The transition and employment guide required by the bill would help parents and students by compiling existing information now scattered among different resources and agencies into one document. Having a standard transition guide with information about state services for adults with disabilities would help school officials provide better information to students and their families. Districts would be able to add specific information about local programs, if applicable.

Publishing the guide on the websites of TEA and school districts would make it easier for families to access the various services available to them. TEA said that any costs to compile the guide could be absorbed by federal funds for special education services without a significant impact to agency operations.

The 2010 American Community Survey reported a staggering unemployment rate of 38.2 percent for workers with disabilities in Texas. Many adults with disabilities want to work but do not have support to find and retain employment. If students' interests and strengths were identified and services for obtaining and maintaining meaningful employment were

provided to them, the unemployment rate for youth with disabilities could be reduced.

There are waiting lists for many programs that serve individuals with disabilities. It is important for families to identify appropriate services and get their children on the waiting lists early.

OPPONENTS SAY:

School districts already are required to provide transition services to students enrolled in special education programs. Although HB 617 would not require districts to hire new staff, it would require additional duties and possibly training. The bill also would create additional work for TEA at a time when the Sunset Commission reported that budget cuts have left the agency with insufficient resources to carry out its current duties.

OTHER OPPONENTS SAY:

The bill should require TEA to translate the guide into Spanish to ensure that translation costs were incurred once at the state level instead of multiple times in individual districts.

NOTES:

The identical companion bill, SB 37 by Zaffirini, was referred to the Senate Education Committee on January 28. A duplicate bill, HB 673 by Ratliff, was referred to the House Public Education Committee on February 18.

SUBJECT: Directing certain state agencies to review investigative practices

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

2 absent — Coleman, Cortez

WITNESSES: For — (*Registered, but did not testify*: Patrick Fitzsimons, Farm and Ranch Freedom Alliance; Anne Olson, Texas Baptist Christian Life Commission)

Against — None

On — Rick Copeland, Texas Attorney General; Douglas Wilson, HHSC

DIGEST: CSHB 947 would direct the Health and Human Services Commission's office of the inspector general (OIG) to work with the office of the attorney general (OAG) to review how the agencies coordinate efforts to:

- investigate fraud, waste, and abuse in providing health and human services; and
- enforce state laws that address provision of these services.

The OIG also would be required to develop strategies to address fraud, waste, and abuse in the supplemental nutrition assistance program (SNAP).

By September 1, 2014, the offices would be required to submit a report to the Legislature detailing any additional authority that would enable the OIG to more effectively conduct investigations. The OIG would be required to submit a report on strategies to address SNAP fraud, waste, and abuse by the same date.

The bill would take effect September 1, 2013, and its directives would expire January 1, 2015.

SUPPORTERS SAY:

CSHB 947 would help lawmakers understand the extent to which the OIG coordinates with the OAG on fraud, waste, and abuse investigations in health and human services. Although the two agencies work together to investigate Medicaid fraud, waste, and abuse, it is unclear whether the agencies coordinate their efforts on other health and human services investigations and whether the OIG needs additional authority in this area.

Although some critics argue that this bill is unnecessary because interagency coordination is already required, CSHB 947 would allow lawmakers to evaluate and improve the interagency investigative process and ensure that current law was being followed.

Further, despite some federal oversight, too little is known about SNAP fraud, waste, and abuse in Texas, and the OIG does not currently have a specific process to address problems. A report would help the agency develop strategies to investigate potential fraud, while enabling lawmakers to determine if the program is being abused and evaluate whether additional state oversight is necessary.

OPPONENTS SAY:

The initiative proposed in CSHB 947 is unnecessary because interagency coordination on health and human services investigations is already required by the Government Code. Further, the U.S. Department of Agriculture maintains oversight of SNAP fraud, waste, and abuse by monitoring electronic benefit transfers and investigating suspicious transactions.

NOTES:

CSHB 947 differs from the bill as introduced in that the committee substitute would include the OAG as a collaborator in producing the report to the Legislature on whether the OIG needed additional authority to more effectively conduct investigations.

SUBJECT: Adding the 79th Judicial District to the Professional Prosecutor Act

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson

0 nays

WITNESSES: For — Carlos Omar Garcia, 79th Judicial District

On — (*Registered, but did not testify:* Shannon Edmonds, Texas District and County Attorneys Association)

Against — None

BACKGROUND: The Professional Prosecutors Act, Government Code, Ch. 46, ties the salary of elected prosecutors covered by the act to the salary of a Texas district judge, which is $125,000. Elected prosecutors outside of the act make 80 percent of a district judge's salary, or $100,000.

The 79th Judicial District covers Brooks and Jim Wells counties.

DIGEST: HB 1278 would add the 79th Judicial District to the list of jurisdictions covered by the Professional Prosecutors Act.

SUPPORTERS SAY: The 79th Judicial District should be added to the Professional Prosecutors Act because the workload of the elected prosecutor for Brooks and Jim Wells counties has grown to the point that the increase is salary is needed to ensure the prosecutor devotes all of his or her efforts to representing the state. The act enhances the quality of public prosecution in Texas by requiring certain felony prosecutors to give up their private practices in exchange for receiving a salary matching that of a district judge, which is currently $125,000.

The 79th Judicial District has seen an increase in population and an increase in crime that comes with it. The 79th Judicial District, which runs along U.S. Highway 281, has experienced an increase in transient and

border-related crime, particularly in narcotics trafficking. The state should invest in more prosecutorial resources to stem criminals apprehended in the district to keep them from moving north or south along the highway to other parts of the state. Raising the salary of the prosecutor to the level of the district judge would provide incentive for that person to devote his or her energies full time to protecting the public and allow the office to more quickly clear a backlog of pending cases.

Historically, the Legislature has added felony prosecutor offices into the act when the prosecutor has requested it. The exception was when the 82nd Legislature did not move two prosecutors into the act because of a lack of funding for spending increases. Since the state has seen a dramatic increase in revenue, the state can afford to add the 79th Judicial District to the professional prosecutor act, especially with corresponding benefits to law and order.

OPPONENTS SAY:

The Legislature should be careful about making long-term funding commitments when it comes to criminal justice matters that may have only a local impact.

NOTES:

According to the fiscal note, HB 1278 would cost the state an additional $28,394 in general revenue related funds and $55,674 in all funds in each biennium.

The identical companion bill, SB 479 by Hinojosa, was passed by the Senate by a vote of 30-0 on March 27. It was referred to the House Judiciary and Civil Jurisprudence Committee on April 4.

CSSB 1 includes a rider in article 11 that would raise the annual salary of state district court judges by 10 percent to $137,500.

SUBJECT: Combined heating and power systems for critical governmental facilities.

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 11 ayes — Keffer, Crownover, Burnam, Canales, Craddick, Dale, P. King, Lozano, Paddie, R. Sheffield, Wu

0 nays

WITNESSES: For — Rich Herweck, Texas CHP Initiative; (*Registered, but did not testify*: Rita Beving and David Power, Public Citizen; Paul Cauduro and Tommy John, Texas CHP Initiative; Raymond Deyoe, Integral Power LLC; Liza Firmin, Chesapeake Energy; Cyrus Reed Lone Star Chapter - Sierra Club; Susan Ross, TREIA)

Against — None

On — (*Registered, but did not testify*: Dub Taylor, State Energy Conservation Office)

BACKGROUND: Government Code, sec. 2311.001 defines a "combined heating and power (CHP) system" as a system located on the site of a facility that is the facility's primary source of electricity and thermal energy, can provide all of the electricity needed to power the facility's critical emergency operations for at least 14 days, and has an overall efficiency of energy use that exceeds 60 percent.

It defines a "critical government facility" as a building owned by the state or a political subdivision that is, among other things, expected to be continuously occupied and to serve a critical public health or safety function during a natural disaster or emergency situation.

Sec. 2311.002 requires an entity that is building or extensively renovating a critical government facility or replacing major heating, ventilation, and air conditioning to determine whether installing a CHP system would save more in energy costs over a 20-year period than the cost of the construction, renovation, or installation of the system. The entity may equip the facility with a CHP system if expected energy savings exceed expected costs.

Education Code, sec. 61.003 defines institutes of higher education as any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in the code.

DIGEST:

HB 1864 would direct the State Energy Conservation Office (SECO) to establish guidelines to evaluate whether projected energy savings from installing a critical government facility with a CHP system would be more than the cost of installing and operating the system over a 20-year period.

The bill would add buildings at institutions of higher education to the list of those defined as a critical government facilities required to consider installing a CHP system for new construction or extensive renovation.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1864 would allow the SECO to provide clear, universal guidelines for critical state buildings to determine the cost-effectiveness of installing an energy-efficient combined heating and power (CHP) system.

This would provide statewide standards for proper consideration of CHP technology when building or making major renovations to critical government facilities. Currently, evaluation criteria are not clearly defined and lack meaningful oversight. Evaluations range from cursory reviews of CHP systems to extensive and costly engineering reviews. The bill would allow the SECO to develop a consistent method for evaluations and provide technical expertise to ensure critical steps were taken to determine if CHP should be installed.

The SECO would be the appropriate agency to create standards, which would consider return on investment and rigorous cost-benefit analysis to determine if a CHP were suitable. The SECO already oversees a revolving loan program for energy efficiency upgrades and approves energy savings performance contracts for state agencies. The agency easily could provide clear, measurable guidelines for new construction and renovations with no additional cost to the state.

Natural gas-fueled CHP systems would promote energy efficiency and serve as a safeguard against power outages caused by natural disasters and other disruptions to the power grid. CHP systems offer an integrated

approach known as “cogeneration” that produces heat and electricity. Unlike conventional backup generators that rely on diesel fuel and may not start during a power outage, CHP systems can be designed to maintain critical systems, operate independently of the grid during emergencies, and be capable of black start (the ability to come online without relying on external energy sources).

Colleges and universities should be required to consider installing CHP systems to ensure operation during emergencies and to save energy. State campuses increasingly have critically important buildings, such as medical and biological research labs and student dormitories, that need to maintain electricity even in emergencies.

Allowing the SECO to develop CHP guidelines would provide a template to continue the state’s consistent, measured approach to energy efficiency and security.

OPPONENTS SAY:

HB 1864 should require that critical government facilities install CHP systems and not be given the option of using more traditional standby generators or other systems. CHP technology is well developed and has a proven track record of energy savings and reliability.

NOTES:

During the 82nd Legislature in 2011, an identical bill, HB 2623 passed the House but was left pending in the Senate's Committee on Transportation and Homeland Security.

SUBJECT: Posting cost-efficiency suggestions on certain state agency websites

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 7 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Scott Turner, Vo

0 nays

WITNESSES: For — (*Registered, but did not testify:* Rita Beving and David Power, Public Citizen; Richard Lavine, Center for Public Policy Priorities; Michael Schneider, Texas Association of Broadcasters; Tom Smitty Smith, Public Citizen)

Against — None

On — (*Registered, but did not testify:* Beth Hallmark, Texas Comptroller of Public Accounts)

DIGEST: CSHB 1128 would require each state agency that has at least 1,500 or more employees, except institutions of higher education, to accept cost-efficiency suggestions and ideas from employees through a link on its intranet or public Internet website.

The bill would require each agency to provide a link on its Internet website for members of the public to monitor, in real time or on a weekly or monthly basis, employee suggestions and to vote for their favorite submission. State agencies that already allow online employee input through a similar program could be excluded from these requirements.

The Department of Information Resources (DIR) would adopt rules establishing procedures and required formats for implementing CSHB 1128. The rules would have to require that employee submissions and public votes be moderated to exclude overtly political or offensive material.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1128 would harness the creativity and expertise of state employees, who often have the best perspective on how to improve the administration of public programs. The bill would require large agencies to create a method for employees to submit online suggestions or ideas on how to improve the functioning of their agencies.

Fourteen large agencies, including the Texas Department of Criminal Justice, various health and human services agencies, the Parks and Wildlife Department, the Department of Public Safety, and the Texas Commission on Environmental Quality, would be affected. The impacted agencies carry out important work of state government. They accounted for more than $100 billion of the fiscal 2012-13 state budget.

Setting up and maintaining the web forums would use state resources, but the affected agencies reported to the Legislative Budget Board that additional costs could be absorbed into their existing budgets, and the fiscal note to CSHB 1128 reflects no significant cost to the state.

Each agency would moderate online submissions to remove offensive, partisan, or politically charged material. As part of this process required by the bill, the agency would also have discretion to remove non-constructive complaints or other input that was not germane to improving cost efficiency.

On each Internet site, the public would have the opportunity to vote for their favorite submissions. The public input would not mandate state action but would be a reflection of support for innovative, cost-cutting proposals. The bill would not allow the public to post their own efficiency ideas because the program is designed to gather valuable knowledge from agency employees who see firsthand what does and does not work. It makes sense to solicit feedback from the very workers who would be responsible for implementing solutions.

Efforts at the federal level to gather ideas from government employees to improve programs have been successful. These efforts have helped eliminate waste in drug procurement for uninsured patients and cut travel costs through improved online learning opportunities. CSHB 1128 would provide a similar opportunity at the state level, leaving discretion with each agency to decide which, if any, ideas should be implemented.

OPPONENTS SAY:

The online forums could be used by employees who wanted to complain about their work environment or offer suggestions that were not related to cost-cutting or program improvement. This would be a waste of state resources and could negatively affect morale within the affected agencies.

There is a limit to how many extra mandates can be absorbed into agency budgets. According to the fiscal note, two of the agencies that would be affected by CSHB 1128, the Comptroller of Public Accounts and the Department of Public Safety, estimated that there would be a cost associated with implementing the provisions of the bill.

OTHER OPPONENTS SAY:

CSHB 1128 should allow the public to contribute their suggestions for improving agency efficiency and effectiveness. The program created by the bill should contain a process for reviewing and implementing the best suggestions from state workers and the public alike.

NOTES:

The committee substitute differs from the bill as introduced in that it would require that employee submissions and public votes be moderated to exclude overtly political or offensive material.

SUBJECT: Adoption of the Uniform Trade Secrets Act

COMMITTEE: Technology — committee substitute recommended

VOTE: 4 ayes — Elkins, Button, Fallon, Gonzales

0 nays

1 absent — Reynolds

WITNESSES: For — Joseph Cleveland, Greg Porter

Against — None

BACKGROUND: The Uniform Trade Secrets Act (UTSA) was promulgated in 1979 and amended in 1985 by the Uniform Law Commissioners, a national group of law professors and lawyers. It aimed to codify the existing common law on misappropriation of trade secrets by providing key definitions and remedies. States are not required to pass the act exactly as it is, and there is some variation from state to state. Texas has not adopted the UTSA.

Civil Practice and Remedies Code, ch. 134, the Texas Theft Liability Act (TTLA), provides civil remedies for unlawfully appropriating property, including theft of trade secrets as defined in Penal Code, sec. 31.05.

DIGEST: CSHB 1894 would create the Texas Uniform Trade Secrets Act, based on the model UTSA, with some adjustments. It would define terms, provide for injunctive relief, damages, and attorney's fees, and establish a presumption in favor of protective orders to preserve the secrecy of trade secrets.

Definitions. The bill would define several terms relating to trade secret misappropriation.

"Trade secret" would mean information, including a formula, pattern, compilation, program, device, method, technique, process, financial data, or list of actual or potential customers or suppliers that:

- derived independent economic value from not being generally

known to and not being readily ascertainable by proper means by others who could obtain economic value from its disclosure or use, and

- was the subject of reasonable efforts under the circumstances to maintain its secrecy.

"Proper means" would mean discovery by independent development, reverse engineering unless prohibited, or other means that were not improper. "Reverse engineering" would mean the process of studying, analyzing, or disassembling a product or device to discover its design, structure, construction, or source code if the product or device were acquired lawfully.

"Misappropriation" would mean acquisition, disclosure, or use of a trade secret that was acquired by improper means or disclosure or use of a trade secret of another without consent by a person who knew or had reason to know that their knowledge of the trade secret was:

- derived from a person who had used improper means to acquire it;
- acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
- derived from or through a person who owed a duty to maintain its secrecy or limit its use.

It would include disclosure or use without consent by a person who, before a material change of the person's position, knew or had reason to know it was a trade secret and that knowledge of it had been acquired by accident or mistake.

"Improper means" would include theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, limit use, or prohibit discovery of a trade secret, or espionage.

Injunctive relief. Injunctive relief for actual or threatened misappropriation would be available under the bill. The injunction would be terminated when the trade secret ceased to exist but could be continued for an additional reasonable period of time in order to eliminate a commercial advantage. In exceptional circumstances, an injunction could condition future use upon payment of a reasonable royalty for no longer than the time for which the use could have been prohibited.

Damages. Under CSHB 1894, a claimant could recover damages in addition to or in lieu of injunctive relief. Damages could include actual loss caused by misappropriation of trade secrets and unjust enrichment not taken into account in actual loss. In lieu of damages measured by other methods, damages could be measured by calculating a reasonable royalty for unauthorized disclosure of a trade secret. If willful and malicious misappropriation were proven by clear and convincing evidence, exemplary damages not exceeding twice the initial award of damages would be available.

Attorney's fees. Payment of attorney's fees would be available to a prevailing party under the bill if a claim were made in bad faith, if a motion to terminate an injunction were made or resisted in bad faith, or if the misappropriation were found to be willful and malicious.

Preservation of secrecy. The bill would create a presumption in favor of granting protective orders to preserve the secrecy of trade secrets. Courts would be required to preserve alleged trade secrets by reasonable means. Protective orders could include provisions sealing records, holding in-camera hearings, limiting access to confidential information to only the attorneys and experts, and issuing orders preventing disclosure.

Effect on other law. CSHB 1894 would displace conflicting existing law providing civil remedies for misappropriation of trade secrets. It would control in conflicts with the rules of civil procedure but would not affect existing contractual or criminal remedies.

The bill would remove the Penal Code provision on theft of trade secrets from the definition of "theft" under the Texas Theft Liability Act.

CSHB 1894 would not affect disclosure of information by a governmental body under the Public Information Act.

The bill would take effect September 1, 2013, and would apply only to misappropriation of a trade secret made on or after that date.

SUPPORTERS SAY:

CSHB 1894 would harmonize and update the practice of trade secret misappropriation cases in Texas. Texas is one of only four states that have not adopted the UTSA, and adopting it would put the state in step with virtually every other jurisdiction throughout the country. Texas currently follows the First Restatement of Torts published in 1939 and common law

in this area. This means that Texas practice is decades behind current law in an area that is heavily affected by technological advancements. Texas needs to adopt the UTSA to bring trade secrets practice into the 21st century and in line with the rest of the nation. CSHB 1894 would not undermine common law. Instead, the existing common law, to the extent that it is not inconsistent, would serve to inform the meaning of the statute.

CSHB 1894 would strengthen the economy by attracting businesses to Texas and would benefit businesses already operating in Texas that rely on trade secret protection for their innovation. The fact that Texas is one of the last remaining states without the UTSA in place is a disincentive for businesses with trade secrets to do business in the state. Protection provided by current law is unclear and difficult to understand. By creating a presumption in favor of protective orders to protect the secrecy of alleged trade secrets, CSHB 1894 would ensure that the protection afforded to business was not only clear but strong. Adoption of the UTSA would provide consistent and predictable laws for trade secret protection and make it clear to businesses that Texas law would protect their interests if their trade secrets were misappropriated.

With the adoption of the UTSA, Texas lawyers would have an easier time practicing trade secrets law. The UTSA would clarify and combine the prevailing law in one section of code and eliminate uncertainties and inconsistencies, such as the definition of a trade secret and the elements of misappropriation. It also would clarify that certain legitimate business activities, such as reverse engineering, would not constitute misappropriation of trade secrets. Courts still would address the specific facts and situations presented by each case. Adoption of CSHB 1894 and the certainty provided by a specific definition of trade secrets would make it more likely that different courts presented with the same facts and situations would reach similar results.

Effect on courts and award of attorney's fees. CSHB 1894 would ease the burden on courts by providing more certainty to both potential plaintiffs and defendants. It would allow speedier resolution of cases and prevent lawsuits with no basis under the UTSA from being filed. It would provide disincentives for those making claims in bad faith and would not encourage unnecessary litigation. The provisions in the bill would make it easier to litigate legitimate claims of misappropriation by making the outcomes more predictable and consistent, without encouraging bad faith or unneeded litigiousness. The availability of attorney's fees when a claim

was made in bad faith would decrease the number of claims made without sufficient merit.

CSHB 1894 would decrease the cost for a business to litigate a trade secret case by providing simpler standards for relief, while offering an avenue for recovering attorney's fees against willful and malicious actors and eliminating excessive non-economic damages. Currently, bringing a separate action through the TTLA is one of the only ways to recover attorney's fees in a trade secrets misappropriation case, and trade secrets cases often involve attorney's fees in the six-figure range. Allowing for recovery of attorney's fees without requiring separate causes of action under other areas of law would help protect those who brought legitimate claims from having to pay these fees to protect secrets from someone else's malicious actions.

Customer lists. The inclusion of customer lists in the bill's definition of trade secret would not lead to more litigation or cause problems for executives changing employers. The UTSA's definition of trade secret requires that the information not be readily ascertainable by proper means. Thus, to the extent a compilation of customer identities could be easily ascertained through publicly available means, the compilation would not be a trade secret and would not be subject to litigation.

Prevailing parties. It is not necessary to define "prevailing party" in the bill. A court could look to Texas common law and the common law of the other 46 states that have adopted the UTSA in determining who was a prevailing party for purposes of recovering attorney's fees.

OPPONENTS SAY:

CSHB 1894 would change the way trade secret misappropriation was litigated in Texas. Currently, trade secret litigation is argued on a case-by-case basis, allowing for courts to address the specific facts and situations presented by each case. Adoption of the UTSA would displace and undermine existing common law by which this area is governed.

Effect on courts and award of attorney's fees. CSHB 1894 would make companies more likely to pursue trade secret litigation. It would expand the amount of material protected as trade secrets, allow courts to protect alleged trade secrets in a case, and provide for recovery of attorney's fees. Current law discourages businesses from clogging the courts with unnecessary lawsuits, and lowering these standards could increase the amount of trade secret litigation that came before Texas courts.

Customer lists. The bill's inclusion of customer lists in the definition of trade secrets would change the way the law is practiced in Texas and nationally. Both Texas common law and the model UTSA require an intensive inquiry to determine whether specific customer lists are worthy of trade secret protection. In the modern age, customer identities are often easily ascertained through publicly available means such as Google or LinkedIn. Explicitly including these lists in the definition of trade secret could cause problems for executives or others who changed employers and might want to use knowledge of their previous employers' customers in some fashion. CSHB 1894 would open these executives up to trade secret litigation for using information that might actually be easily ascertainable.

Prevailing parties. The term "prevailing party" is used in reference to recovery of attorney's fees but is not defined in the bill. Under the TTLA, parties obtaining injunctions but not damages are unable to recover attorney's fees. It is unclear how these parties would be treated under the UTSA.

NOTES:

CSHB 1894 differs from HB 1894 as filed in that the committee substitute would require that willful and malicious misappropriation be proven by clear and convincing evidence and specify that the act did not affect disclosure by a governmental body under the Public Information Act.

The companion bill, SB 953 by Carona, was passed by the Senate and reported favorably by the House Committee on Technology on April 18.

SUBJECT: Increased penalties for sex offender registry violations with identity theft

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody

0 nays

2 absent — Schaefer, Toth

WITNESSES: For — None

Against — (*Registered, but did not testify:* Jacalyn Iversen)

On — (*Registered, but did not testify:* Lisa Hoing, Office of the Attorney General)

BACKGROUND: Code of Criminal Procedure, sec. 62.102 makes it a crime for those who are required to register with the state's sex offender registry to fail to comply with any requirement of the registry.

Violations are state jail felonies (180 days to two years in a state jail and an optional fine of up to $10,000) for those required to register for 10 years, third-degree felonies (two to 10 years in prison and an optional fine of up to $10,000) for those subject to lifetime registration with annual verification, and second-degree felonies (two to 20 years in prison and an optional fine of up to $10,000) for those subject to lifetime registration with verifications every 90 days.

Penal Code, sec. 32.51 makes it a crime to fraudulently use or possess the identifying information of others without their consent and with the intent to harm or defraud another. Offenses are state jail felonies, third-degree felonies, second-degree felonies, or first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000), depending on the number of items possessed or used.

DIGEST: HB 2637 would increase the punishments for failing to comply with the state's sex offender registry requirements and for attempts to commit this offense if done with the fraudulent use of identifying information in

violation of the Penal Code, sec. 32.51 provisions on identity theft. The punishments would be increased to the next highest felony.

The bill also would increase the punishments for the offense of fraudulently using or possessing the identifying information of another if the identifying information were used with the intent to facilitate a violation of the sex offender registry requirements. Current state jail, third-degree, and second-degree felony punishments would be increased to the next highest category.

The bill would take effect September 1, 2013, and would apply to offenses committed on or after that date.

SUPPORTERS SAY:

HB 2637 is necessary to address the alarming use of identity theft by sex offenders trying to avoid the oversight of the sex offender registry. Current penalties for both the crime of failing to follow the requirements of the registry and for identity theft are inadequate to punish and deter these serious crimes when they are related.

In Texas and other states, sex offenders have stolen the personal identifying information of others and used it to live a life under an assumed identity free from the requirements of the sex offender registry. In a Texas case, a sex offender lived for years under an assumed identity and outside the reaches of the registry. After finally being convicted for failing to follow the sex offender registry requirements, he received less than two years of probation, a mere slap on the wrist. In a Vermont case, a sex offender obtained a military identification and lived for years under the soldier's identity.

Violating the sex offender registry requirements and identity theft are especially dangerous when committed in tandem. Sex offenders committing these crimes have demonstrated that they will go to great lengths to avoid the oversight of the registry, putting the public at risk. Victims of identity theft suffer financially and emotionally, and it can be extremely difficult for them to put their lives back together, especially if their identity was stolen by a sex offender.

Current punishments for these individual crimes do not reflect the harm caused when they are related. While offenders could be prosecuted for each individual crime, punishments would run concurrently, resulting in no increase in punishment for the combination of crimes.

HB 2637 would address these issues by increasing the punishments for both non-compliance with the sex offender registry and identity theft if the crimes were related. Longer sentences for violators of the sex offender registry who also commit identity theft would better protect the public, and, it is hoped, deter these crimes in the first place.

OPPONENTS SAY:

Current law adequately punishes both the crimes of non-compliance with the sex offender registry and identity theft. These punishments have a wide range that can be adapted to the seriousness of a violation. For example, failing to comply with the sex offender registry requirements can be a second-degree felony, with two to 20 years in prison. Identity theft can be punished as severely as a first-degree felony, ranging from 5 to 99 years or life in prison.

NOTES:

The companion bill, SB 827 by Whitmire, has been reported favorably by the Senate Criminal Justice Committee and recommended for the local and uncontested calendar.